

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

VICKY JONES,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO.: 03: 05-cv-0420-F
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

**DEFENDANT’S MOTION TO DISMISS, OR IN THE ALTERNATIVE,
FOR SUMMARY JUDGMENT**

Comes now the Defendant, the United States of America, by and through Leura G. Canary, United States Attorney for the Middle District of Alabama, and pursuant to Rules 12(b), and Rule 56, Federal Rules of Civil Procedure moves for the dismissal and or grant of summary judgment as to all claims in the complaint, and as grounds states as follows:

1. This Court lacks jurisdiction over Plaintiff’s state law claims brought pursuant to the Federal Tort Claims Act (FTCA), because Plaintiff failed to present her claim in accordance with 28 U.S.C. § 2401(b) which requires claims to be filed within two years from the date the cause of action accrued.
2. This Court lacks jurisdiction over Plaintiff’s state law claims because Plaintiff failed to present her claim to the appropriate Federal agency within 60 days of the entry of dismissal of his previous action as required by 28 U.S.C. § 2679(d)(5).
3. Plaintiff’s claims fail to state a claim for which relief can be granted.

4. In support of this motion, Defendant offers the attached exhibit numbered one (1) and a memorandum brief which is being filed contemporaneously herewith.

Respectfully submitted this 22nd day of July, 2005.

Leura G. Canary
United States Attorney

By: s/R. Randolph Neeley
R. RANDOLPH NEELEY
Assistant United States Attorney
Bar Number: 9083-E56R
Attorney for Defendant
Post Office Box 197
Montgomery, AL 36101-0197
Telephone No.: (334) 223-7280
Facsimile No.: (334) 223-7418

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of July, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/EDF system which will send notification of such filing to plaintiff's attorney, Richard F. Horsley, Esq.

s/R. Randolph Neeley
Assistant United States Attorney